THE HONOURABLE SRI BILAL NAZKI

THE ACTING CHIEF JUSTICE

AND

THE HONOURABLE SRI JUSTICE

R.SUBHASH REDDY

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W.A. Nos. 1815 & 1510 of 2005

Dated 21st September, 2005.

Between:

Smt.Jhansi Vijaya Laxmi & others.

-- Appellants

And

The Municipal Corporation of Hyderabad,

Represented by its Commissioner/Special

Officer, Tank Bund, Hyderabad & others.

-- Respondents.

COMMON JUDGMENT:

(per Honourable Sri Justice R.Subhash Reddy)

The matter that arises for consideration in both the Writ Appeals is one and the same, and, therefore, both the Writ Appeals are clubbed together and are being disposed of by a common judgment.

Writ Appeal SR No. 136287 of 2005 is directed against the order dated: 17.6.2004 passed by the learned Single Judge in W.P.No. 20822 of 1993, and, Writ Appeal No.1510 of 2005 is directed against the order dated: 24.8.2004 passed in

Shorn of unnecessary details, the case, in brief, is that the land admeasuring 12000 sq. yards in Survey No.137 of Monje Nampally, Narayanguda, Hyderabad belonging to one Smt. P.C.Seethamma was occupied by the slum dwellers belonging to 253 families. The Municipal Corporation of Hyderabad after being satisfied that the area of 12000 sq. yards occupied by the slum dwellers was a source of danger to public health, safety or inconveience to its neighbourhood by reason of the area being on the drain, declared the said area to be a slum area under Section 3(1) of the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956, which was published in Gazette No.40, page 838 of Part-I of A.P.Gazette, dated: 7.10.1982. Then, the owners of the said land, Smt.P.C.Seethamma, the mother of the writ petitioners, and P.C.V.L.Narasimha Chari together entered into a compromise with the slum dwellers represented by their Association M/s. Gandhi Kuteer Welfare Society, whereby, it was agreed to by them that 5500 sq. yards situated on the rear side would be given to the slum dwellers at free of cost, and, consequently, the slum dwellers had to vacate the remaining portion of the land in the front side and hand-over possession of the same to the owners. Accordingly, a letter was addressed by the owners and the Gandhi Kuteer Society jointly to the Municipal Corporation of Hyderabad agreeing for various terms and conditions. Based on the said letter and in view of the fact that consent was given by the land-owner to relinquish an area of 5500 sq. yards in favour of the Gandhi Kuteer Welfare Society, free of cost, the Municipal Corporation issued notification No.113/UCD/D/1982-1, dated: 30.4.1983 under Section 3(2) of the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 acquiring only 5500 sq. yards actually under occupation of the 150 hutments out of the lands declared as “Slum Area” in pursuance of Section 3(1) of the said Act, which was acceded to by the land owners to be given to the slum dwellers free of cost, and declaring that from the date of publication of the said notification in the A.P.Gazette, the same stands vested in the Government of Andhra Pradesh free from all encumbrances. Aggrieved by the non-payment of the compensation to the petitioners for the acquisition of the land admeasuring 3000 sq. yards in Sy.No.137 of Monje Nampally situated at Narayanguda, Hyderabad, the petitioners filed Writ Petition No.20822 of 1993 for issuance of a Writ of Mandamus declaring the Proceedings No.B/3012/UCD/MCH/1993-2214, dated: 5.10.1993 as null and void and for a direction to the respondents therein to pay the compensation to the petitioners for the acquisition of the land admeasuring 3000 sq. yards.

A learned Single Judge of this Court dismissed Writ Petition No.20822 of 1993 on 17.6.2004 holding that there was no challenge to the notifications issued under Section 3(1) and 3(2) of the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 and the family partition deed, which is unstamped and unregistered and sought to be relied upon by the petitioners cannot be received as a piece of evidence. He further observed that the petitioners having issued notice under Section 80 CPC expressing their intention to file a civil suit had chosen to file the writ petition with vague and indefinite allegations and since the notification was issued having regard to the consent given by the land owner, P.C.Seethamma, relinquishing the said area in favour of slum dwellers at free of cost and no objection was raised during her life time, the writ petition was dismissed.

Thereafter, the petitioners filed Writ Petition No.14959 of 2004 challenging the action of the Municipal Corporation in issuing the notifications under Section 3(1) and 3(2) of the A.P.Slum Improvement (Acquisition of Land) Act, 1956 and acquiring the land of the petitioners without payment of any compensation. The said writ petition was also dismissed by the learned Single Judge holding that the writ petition was nothing but a speculative litigation as the notification was very much available for challenge when the earlier writ petition was filed and having failed to challenge the same in the earlier writ petition, they cannot be allowed to challenge in the subsequent writ petition on the earlier writ petition being dismissed.

We have heard the learned counsel for parties and perused the record.

In both the writ petitions, the case of the petitioners was that the consent given by P.C.Seethamma relinquishing the land to an extent of 5500 sq. yards in favour of Gandhi Kuteer Welfare Society, free of cost, was not valid as she was not the owner and the petitioners are the owners of the said property by virtue of a partition deed said to have been executed. As such, they are entitled for compensation as per the market value along with interest.

From the averments made, it is clear that originally the land stood in the name of late P.C.Seethamma. Initially, 12000 sq. yards of land belonging to P.C.Seethamma was occupied by the slum dwellers, and, it is only on the basis of the compromise entered into between P.C.Seethamma and P.C.V.L.Narasimha Chari together on one hand and the slum dwellers represented by their Association M/s Gandhi Kuteer

Welfare Society agreeing to give 5500 sq. yards free of cost to the slum dwellers, that the slum dwellers vacated the remaining area on the front side and the area of 12000 sq. yards notified under Section 3(1) of the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 was reduced to 5500 sq. yards in notification under Section 3(2) of the said Act. No objection was ever raised during her life-time as to the consent given by her for parting away the area of 5500 sq. yards in favour of M/s Gandhi Kuteer Welfare Society free of cost. Having kept quiet for nearly a decade after the issuance of the notifications, the petitioners approached the Court by filing the writ petition in the year 1993 without even challenging the notifications issued under the A.P.Slum Improvement (Acquisition of Land) Act, 1956 and challenging the action of the respondents in not paying the compensation on the ground that they are owners of a portion of the property under acquisition by virtue of a partition deed. The notification was issued in the year 1983 on the basis of the consent given by the mother of the petitioners for parting 5500 sq. yards in favour of slum dwellers at free of cost and till the filing of the writ petition, the petitioners who are claiming ownership through P.C.Seethamma, their predecessor-in-interest, by virtue of an unregistered and unstamped partition deed, never raised any objection as to the consent given by her mother and no valid reasons are given for approaching the Court very belatedly. Moreover, no challenge was made to the notifications issued under A.P.Slum Improvement (Acquisition of Land) Act, 1956. Therefore, the learned Single Judge was justified in dismissing W.P.No.20822 of 1993. W.P. No.14959 of 2004 was also rightly dismissed for the above reasons and once earlier Writ Petition was dismissed on the ground that no challenge was made to the notifications, the petitioners cannot be permitted to challenge the same in a subsequently instituted writ petition to get over the same.

Therefore, the Writ Appeals are devoid of any merits and the same are accordingly dismissed, but, without any order as to costs.

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BILAL NAZKI, ACJ

21--9—2005.

R.SUBHASH REDDY, J.

VR.